

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

	ITA NO. 1099/Del/2024		
	A.YR. : 2017-18		
SHWETA SHARMA, F-12/31, 3 <sup>RD</sup> FLOOR, KRISHNA NAGAR, DELHI – 110 051 (PAN: BCBPS0393G) (APPELLANT)	VS.	INCOME TAX OFFICER, Ward 58(7), VIKAS BHAWAN, NEW DELHI – 110 002 (RESPONDENT)	

Appellant by : Shri S.K. Gupta, CA

Respondent by : Ms. Shashi Kajle, Sr. DR.

Date of hearing : 29.10.2024

Date of pronouncement : 29.10.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 18.01.2024, relating to assessment year 2017-18 on the following grounds:-

1. The Ld. CIT(A) has grossly erred both on fact and in law in dismissing the appeal being non-maintainable for delayed filing of appeal by 888 days ignoring the fact that the penalty order dated 29.9.2019 under appeal was never served on the appellant and appellant treated the date of downloading of to be date of service for computation of limitation u/s. 246A(1)(a) r.w.s. 249(2) of the Act.

2. The impugned penalty order is invalid and without jurisdiction as the said penalty proceedings is completed without complying with legal requirements of the provisions of section 271D of the Act therefore such penalty proceedings is void ab initio and liable to be quashed.
3. On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law in upholding the penalty proceedings and consequent penalty order ignoring the fact that the penalty proceedings initiated to impose penalty is without jurisdiction as the same has not been initiated in the course of any assessment proceedings under the Act and penalty has been initiated in the course of any assessment proceedings under the Act and penalty has been initiated without any satisfaction recorded by an authority on the default committed by the appellant u/s. 269SS of the Act. Therefore, such penalty proceedings is void ab initio and liable to be quashed.
4. On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law in upholding the penalty proceedings and consequent penalty order ignoring the fact that the penalty proceedings have been completed after expiry of six months from the date when the information of default came to knowledge of the department and therefore, the order of penalty is barred by limitation laid down under section 275(1) of the I.T. Act.
5. On the facts and circumstances of the case the CIT(A) has erred both on facts and in law in upholding the penalty proceedings and consequent penalty order ignoring the fact that the order of penalty was never served upon appellant within the period prescribed u/s. 153(1) of the Act and in accordance with the procedure prescribed u/s. 282 of I.T. Act and rules framed thereunder and therefore, penalty proceedings / order both are barred by limitation and needs be quashed.

6. On the facts and circumstances of the case the CIT(A) has erred both on facts and in law in upholding the imposition of penalty of Rs. 2,88,000/- ignoring the circumstances under which the payment in violation of section 269SS is accepted and such circumstances were the reasonable grounds on which the AO should have allowed the relief to the appellant as per provisions of section 273B of I.T. Act and therefore, the above penalty needs to be deleted.

2. In this case, AO levied penalty u/s. 271D of the Act amounting to Rs. 2,88,000/-. AO noted that assessee has sold the property and accepted a sum of Rs. 2,88,000/- in cash. He found the same to be clear breach of the provisions of section 269SS of the Act, hence, he levied the penalty u/s. 271D. AO also noted that the assessee has not responded to various queries before him. Ld. CIT(A) upon assessee's appeal noted that there was a delay of 888 days, and therefore, he dismissed the appeal on account of delay in filing the appeal before him.

3. Against the above order, assessee is in appeal before us.

4. We have heard both the parties and perused the records. Ld. Counsel for the assessee pleaded that assessee has not been given adequate opportunity before the AO to properly canvass her case. He further submitted that Ld. CIT(A) has dismissed the appeal for delay in filing the appeal by holding that ITBA portal is effective service of order. However, in our considered view uploading of order on ITBA portal cannot be the sufficient notice to the assessee.

4.1 After considering the aforesaid factual matrix, we are of the considered view, that interest of justice will be served, if the issues in dispute are remitted back to the file of the AO with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee. We hold and direct accordingly.

5. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 29/10/2024.

Sd/-

(YOGESH KUMAR US)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SRB

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar

This order is dictated on : 29.10.24

Date on which the typed draft is placed before the Dictating Member 29.10.24

Date on which the approved draft comes to the Sr.PS/PS 29.10.24

Date on which fair order sent to Member for signature 29.10.24

Date on which the fair order comes back after pronouncement to the Sr. PS/PS.....

Date of Uploading order.....

Date on which the file goes to the Bench Clerk.....

Date on which the file goes to the Head Clerk.....

The date on which the file goes to the Assistant Registrar for Signature on the order.....

Date of Despatch of the Order .....